

HUMAN SERVICES BOARD

INTRODUCTION

ORDER

The Department's decision is affirmed as a matter of collateral estoppel.

REASONS

The petitioner seeks an order expunging substantiations of abuse placed by the Department in the registry.

Petitioner relies on 33 V.S.A. § 4916(h) which states:

A person may, at any time, apply to the human services board for an order expunging from the registry a record concerning him or her on the grounds that it is unsubstantiated or not otherwise expunged expunged in accordance with this section. The board shall hold a fair hearing under section 3091 of Title 3 on the application at which hearing the burden shall be on the commissioner to establish that the record shall not be expunged.

Pursuant to the statute governing reporting abuse of children, "substantiated report" means:

that the commissioner or the commissioner's designee has determined after investigation that a report is based upon accurate and reliable information that would lead a reasonable person to believe that the child has been abused or neglected.

33 V.S.A. § 4912(10).

Further, 33 V.S.A. § 4912 specifically defines "abused or neglected child" and "risk of harm" as follows:

(2) An "abused or neglected child" means a child whose physical health, psychological growth and development or welfare is harmed or at substantial risk of harm by the acts or omissions of his or her parent...An "abused or neglected child" also means a child who is sexually abused or at substantial risk of sexual abuse by any person.

- (3) 'Harm" can occur by:
 - (A) Physical injury or emotional maltreatment.

. . .

- (4) "Risk of harm" means a significant danger that a child will suffer serious harm other than by accidental means, which harm would be likely to cause physical injury, neglect, emotional maltreatment or sexual abuse.

The petitioner does not specifically argue that the findings made by the Vermont Family Court in two separate proceedings fall outside the definition of "risk of harm" as the term is used in the definition.¹ The preliminary matter for the Board's consideration is whether the Board should adopt the findings of the Vermont Family Court under the doctrine of collateral estoppel.

The Board has long recognized the doctrine of collateral estoppel in prior cases and has relied on the test articulated in Trepanier v. Styles, 155 Vt. 259, 265 (1990), to determine whether the Board is precluded by the findings in a prior court proceeding from making its own findings in an expungement case. Fair Hearing Numbers 11,444; 13,432;

¹ Petitioner admitted the underlying facts in Chittenden County Family Court, Docket No. 495 and 496-12-96Cnjv; namely, that the petitioner had attempted suicide in front of one daughter and that petitioner allowed a known sex offender to have access to her children. Petitioner also admitted the underlying facts in Chittenden County Family Court, Docket No. 423-9-99 that she allowed a sexual perpetrator to live with the family.

13,517; 19,147; and 19,692. The Trepanier ruling set out the following criteria at page 265:

- (1) preclusion is asserted against one who was a party or in privity with a party in the earlier action;
- (2) the issue was resolved by a final judgment on the merits.
- (3) the issue is the same as the one raised in the later action.
- (4) there was a full and fair opportunity to litigate the issue in the earlier action; and
- (5) applying preclusion in the action is fair.

In this matter, the petitioner was a party to both Family Court proceedings. In each case, petitioner was represented by counsel and had an opportunity to contest the allegations of the Department. In each case, the matter was resolved by a final judgment on the merits by the Family Court. The Family Court resolved the issue whether there were underlying facts to support a decision that petitioner placed her children at risk of harm. In particular, the Family Court determined in the first case that the petitioner placed one child at risk of harm by threatening suicide in front of the child and placed both children at risk of harm by allowing a sexual predator to have access to her children; the Family Court determined in the second case that petitioner placed the child with her at risk of sexual harm

by allowing a sexual predator to live with the family for several days. The petitioner had a fair and full opportunity to litigate these issues in the CHINS proceedings in Family Court. Therefore, it cannot be concluded that applying the facts found by the Family Court is unreasonable or unfair.

Accordingly, the Department's Motion for a Preliminary Ruling should be granted and the case is dismissed based upon collateral estoppel.

#